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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCHISE

STATE OF ARIZONA,

Plaintiff,

vs.

JUSTIN A. COPELAND,

Defendant.

Case No. CR201800252

JUDGE LAURA CARDINAL,
DIVISION THREE

**STATE'S PREHEARING
MEMORANDUM**

The State of Arizona, through the Cochise County Attorney, Brian McIntyre, and his deputy, Sara V. Ransom, hereby submits its Rule 404(B) Other Acts Pre-Hearing Memorandum. The State will establish that the Defendant Justin Copeland ("Defendant") repeatedly molested minor victim, R.H., his step-daughter, and that he had done so for years before the family moved to Sierra Vista, Arizona. The evidence will further establish that in addition to his on-going crimes against R.H., Defendant has a history of forceful, sexually-motivated assaults upon other women, including his now-ex-wife, and a former military colleague, K.H. Finally, the evidence will demonstrate that Defendant has engaged in a physical confrontation with a recent girlfriend, who was at the time pregnant with his child, and further that Defendant

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1 regularly "cuddles" with his teen-aged, biological daughter. These other acts will be
2 used at trial to demonstrate absence of mistake, as well as to prove motive, intent,
3 plan, and absences of mistake or accident. The Court should admit this evidence under
4 Rule 404(B).

5 The Charged Offenses

6 In November 2017, then-13 year old R.H., Defendant's step-daughter, reported
7 to school officials that her step father had been touching her inappropriately. R.H. was
8 subsequently forensically interviewed, and disclosed that Defendant had come to her
9 when R.H. was five (5) years old and told her that he "loved her." He later asked her
10 if she understood him, and further explained to R.H. that he "loved her" like a
11 boyfriend loved a girlfriend. Thereafter, Defendant would call R.H. into his room,
12 have her lay in his bed with him, and touch her buttocks and vagina. R.H. reported
13 that this conduct occurred regularly, and that as she grew older—around fifth grade—
14 Defendant would frequently touch her underneath her clothes rather than on top of her
15 clothes. R.H. explained these incidents occurred in Korea, Georgia and then more
16 recently in Sierra Vista, Arizona. At the time of the report, R.H. indicated that there
17 had not been an incident of touching for a few weeks.

18 When Defendant became aware of the accusations against him, he became
19 intoxicated, contacted a friend, and admitted that he had touched R.H. in a sexual
20 manner, but claimed it was while he was asleep. He further told officers that he was
21 upset because he was going to go to prison for something he had not "consciously"
22 done. Further investigation revealed that Defendant claims to suffer from
23 "sexsomnia;" however, the medical records Defendant has provided to substantiate his
24 alleged "sexsomnia" demonstrate that he has not, in fact, ever been diagnosed with any
25 sleep condition, and certainly not "sexsomnia."

1 The Grand Jury indicted the Defendant on fifty counts of molestation, and a
2 single count of continuous sexual abuse of a child, which was later amended to be
3 alleged in the alternative.

4
5
6 **The Proffered Other Acts Evidence**

7 On October 18, 2018, the State filed its Notice of Intent to Present Other Acts.
8 Specifically, the State seeks to admit the following evidence of "other acts":

- 9 • Statements made by Defendant Justin Copeland reflected in military
10 medical records wherein he admits to perpetrating sexual acts upon his
11 wife during episodes of "sexsomnia;"
- 12 • Statements made by Sara Copeland regarding Defendant's conduct during
13 his "sexsomnia" episodes;
- 14 • Allegations and military records and proceedings regarding K.H., who
15 alleges that Defendant Justin Copeland engaged in nonconsensual sexual
16 acts with her;
- 17 • Defendant's insinuations or threats to commit suicide and admissions to
18 alleged "sexsomnia" contact with his step-daughter to witness Laura
19 Bradley after notice of the allegations at issue in this case.

20 The State additionally seeks to admit the grooming of R.H. when she was five years
21 old, and the instances of molestation that occurred in other jurisdictions (namely,
22 Korea and Georgia). Additionally, the State recently learned that the Defendant
23 invited his pregnant girlfriend, who has young children, to live with him without
24 explaining the severity of the charges against him. Defendant also engaged in violent
25

1 conduct towards this girlfriend, and the girlfriend reports that Defendant would
2 “cuddle” on the couch with his teen-aged daughter, which she found odd.¹

3
4 Argument

5 Rule 404(B) permits the introduction of other crimes, wrongs, or acts as proof
6 of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of
7 mistake or accident. This is not an exclusive list of purposes for which the prior acts
8 may be offered. *State v. Chaney*, 141 Ariz. 295, 310, 686 P.2d 1265, 1280 (1984).

9 Although the jury is the ultimate finder of fact, “before admitting evidence of
10 prior bad acts, trial judges must find that there is clear and convincing proof both as to
11 the commission of the other bad act and that the defendant committed the act.” *State v.*
12 *Anthony* 218 Ariz. 439, 445, 189 P.3d 366, 372 (2008). Prior to the introduction of
13 other acts evidence, the judge must further find that: 1) the act is offered for a proper
14 purpose under Rule 404(B); 2) the prior act is relevant to prove that purpose; 3) the
15 probative value of that purpose is not substantially outweighed by unfair prejudice;
16 and 4) give upon request an appropriate limiting instruction. *Id.* Although commonly
17 referred to as “prior bad acts” evidence, the State reminds the Court that even
18 subsequent acts—such as Defendant’s conduct and admissions to his friend and
19 officers and his recent violence towards his pregnant girlfriend and his “cuddling” with
20 his teen-aged biological daughter—may be presented to the jury. *See State v. May*,
21 137 Ariz. 183, 187-188 (App. 1983) (subsequent threats against wife properly
22 admitted other acts).

23 Here, the evidence of grooming and past acts against R.H. in other jurisdictions
24 is relevant to the instant charges and rebuts Defendant’s assertion that he was not
25 “conscious” when he molested R.H. while in Sierra Vista. Similarly, Defendant’s

¹ The State disclosed its intention of presenting this evidence to Defendant’s counsel shortly after it learned of this information approximately two weeks ago.

sexually-motivated violence against K.H. and his sexual misconduct with his own wife during the course of their marriage—which she attributes to his drinking rather than odd conduct while sleeping--rebutts Defendant's claims that he only engages in acts of sexual misconduct during his alleged episodes of "sexsomnia." Finally, his conduct towards his pregnant girlfriend, who has young children that he invited to live with him during the pendency of these proceedings, and his "cuddling" with his teenage daughter is relevant to rebut Defendant's defenses, particularly as he and his former wife reported to officers that Defendant is careful around his children due to his alleged "condition." All of the proposed testimony regarding the prior and subsequent acts is thus directly relevant to demonstrate motive, absence of mistake, and plan and intent in this case, as well as rebutting Defendant's apparent defense.² There can be no other way of establishing the other acts without the testimony of witnesses who observed those acts.

The probative value of the other acts evidence is not substantially outweighed by unfair prejudice because Defendant will have the opportunity to cross examine the witnesses, so the jury will be able to weigh the facts. It is the State, not Defendant, that will be prejudiced should this evidence be prohibited, as it is unable to call the Defendant to the stand to rebut his defenses, and will be hindered, if not entirely prevented, from presenting critical evidence to the jury demonstrating that Defendant engages in sexually-motivated misconduct while fully conscious unless it is allowed to present these other acts. The State would not object to an appropriate limiting instruction if one is requested at trial.

Use of Transcripts, Recordings, and Telephonic Testimony is Appropriate.

Defendant asserts that this Court's ruling allowing the testimony of out of state witnesses at the hearing violates the confrontation clause. Defendant is mistaken.

² The State reserves the right to move *in limine* to preclude this defense, as the only evidence of it appears to be Defendant's self-serving assertions.

1 This is a pre-trial, evidentiary hearing wherein the rules of evidence and procedure do
2 not strictly apply. In *State v. Edwards*, 136 Ariz. 177, 184, 685 P.2d 59, 66 (1983),
3 citing *State v. Spratt*, 126 Ariz. 184, 186, 613 P.2d 848 (Ariz.App. 1980), the Supreme
4 Court clearly stated that "in deciding questions involving the admissibility of evidence,
5 the hearsay rules do not apply." Rule 104(a) further makes clear that on preliminary
6 matters, the court is not bound by evidence rules, except those on privilege. Moreover,
7 the right to confrontation of witnesses is a trial right. *Barber v. Page*, 390 U.S. 719,
8 725 (1968); *Delaware v. Fensterer*, 474 U.S. 15, 18 (1985) ("The literal right to
9 'confront' the witness at the time of trial...forms the core of the values further by the
10 Confrontation Clause.") (emphasis added). It does not extend to preliminary matters
11 such as a hearing on the admissibility of evidence.

12 For the purposes of this hearing only, the State seeks to admit, and this Court
13 has properly entered an order accepting, telephonic testimony and recorded interviews
14 and transcripts of witness testimony. The additional telephonic testimony is not
15 required, and is offered by the State to further substantiate its position as well as allow
16 Defendant the opportunity to question these witnesses in advance of trial. The Court
17 will thus be able to make its ruling based on its evaluation not only of recorded
18 interviews and transcripts, but also based upon its evaluation of live witness testimony
19 subject to cross examination.

20 The State acknowledges that should the Court find that this other acts evidence
21 is admissible, at trial it will need to produce all witnesses for in person testimony.

22 Conclusion

23 At the hearing, Defendant will have the opportunity to cross examine these
24 witnesses telephonically. At trial, the Defendant will have the opportunity to cross-
25 examine the witnesses. The Court should maintain its previous orders permitting the
introduction of the recorded statements and telephonic testimony during the State's

1 case-in-chief regarding the Defendant's sexual harassment and unwelcome advances
2 towards the victim that occurred prior to the incident covered in the Indictment.

3 In this case, issues such as motive, absence of mistake, intent and plan will be
4 critical. The proffered other acts evidence goes directly to these issues. The probative
5 value of this evidence is not substantially outweighed by the risk of unfair prejudice.
6 If the Court wishes, the State is happy to prepare proposed findings of fact and
7 conclusions of law with respect to the evidence presented.

8 RESPECTFULLY SUBMITTED this 9th day of January, 2019.

9 COCHISE COUNTY ATTORNEY

10 BY:


Sara V. Ransom

Deputy County Attorney

12 ORIGINAL filed with the Clerk of the Court this 9th day of January, 2019.

13 Copy of the foregoing mailed/delivered/faxed this
14 9th day of January, 2019 to:

15 The Honorable Laura Cardinal
16 Judge of the Superior Court
17 Division I
Via Courthouse Distribution Box

18 Kevin Oursland, Esq.
19 Cochise County Public Defender's Office
20 *Attorney for the Defendant*
Via Courthouse Distribution Box

